



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

KINDRED HOSPITAL DALLAS  
C/O LEIGH GRAVES  
FULTZ MADDOX HOVIOUS & DICKENS PLC  
101 S FIFTH ST 27 FL  
LOUISVILLE KY 40202

#### **Respondent Name**

INSURANCE COMPANY OF THE STATE OF PA

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-12-0062-01

#### **MFDR Date Received**

September 2, 2011

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Denial reason is timely filing. Original claims was rec'd timely. Add'l request were made and complied with that pushed claim past deadline."

**Amount in Dispute:** \$38,874.14

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The EOBs raise the issue of timely filing. Billings were received on 6/15/11. Billings should have been received no later than 6/3/11. Under Sec. 478.027(a), health care providers (HCPs) have 95 days from the date of service to submit a medical bill to the insurance carrier. ... HCPS who fail to meet this deadline forfeit their right to reimbursement."

**Response Submitted by:** Flahive, Ogden & Latson, Post Office Drawer 201329, Austin, TX 78720

### **SUMMARY OF FINDINGS**

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
January 14, 2011 to February 28, 2011	Long-Term Care Hospital Services	\$38,874.14	\$0.00

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
3. 28 Texas Administrative Code §134.404 sets out the fee guidelines for inpatient hospital services
4. 28 Texas Administrative Code §133.2 defines words and terms related to medical billing and processing.
5. 28 Texas Administrative Code §133.10 sets out the requirements for billing forms and formats.
6. 28 Texas Administrative Code §133.20 sets out requirements for medical bill submission by health care providers.

7. 28 Texas Administrative Code §133.200 sets out procedures for insurance carriers upon receipt of medical bills.
8. *Texas Clean Claim and Electronic Medical Billing and Payment Companion Guides* (Version 2.0) sets out the Division instructions related to submission of required billing forms.
9. Texas Labor Code §408.027 sets out the rules for timely submission of a claim by a health care provider.
10. Texas Labor Code §408.0272 sets out the rules for certain exceptions for untimely submission of a claim.
11. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
12. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - TXH3 – 29 THE TIME LIMIT FOR FILING HAS EXPIRED. PER TEXAS LABOR CODE 480.027. BILLS MUST BE SENT TO THE CARRIER ON A TIMELY BASIS, WITHIN 95 DAYS FROM DATES OF SERVICE.

### **Issues**

1. What are the disputed dates of service?
2. What is the timely filing deadline applicable to the medical bills for the services in dispute?
3. Did the requestor timely submit a claim for payment to the insurance carrier?
4. Did the insurance carrier properly return an incomplete medical bill to the health care provider?
5. Did the requestor forfeit the right to reimbursement for the services in dispute?
6. Can an amount determined by application of the formula to calculate the MAR as outlined in §134.404?
7. What is the applicable rule for determining reimbursement?
8. Did the requestor submit documentation of medical records to support the services in dispute?
9. Did the requestor submit a position statement that meets the requirements of §133.307(c)(2)(F)?
10. Did the requestor support that the amount being sought is a fair and reasonable rate of reimbursement?

### **Findings**

1. Former 28 Texas Administrative Code §133.307(c)(2)(C), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include “the form DWC-60 table listing the specific disputed health care and charges in the form and manner prescribed by the Division.” Review of the submitted documentation finds that the requestor indicated on the form DWC-60 that the disputed date of service was September 1, 2011. However, review of the submitted documentation supports that the disputed services were rendered from January 14, 2011 to February 28, 2011. The Division takes notice that the requestor made a clerical error in completing the form DWC-60 table of disputed services, however, the Division will deem the disputed dates of service to be January 14, 2011 to February 28, 2011 for the purposes of this review.
2. 28 Texas Administrative Code §133.20(b) states, in pertinent part, that, except as provided in Texas Labor Code §408.0272, “a health care provider shall not submit a medical bill later than the 95<sup>th</sup> day after the date the services are provided.” No documentation was found to support that any of the exceptions described in Texas Labor Code §408.0272 apply to the services in this dispute. For that reason, the requestor in this dispute was required to submit the medical bill not later than 95 days after the date the disputed services were provided.
3. Texas Labor Code §408.027(a) states, in pertinent part, that “Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider’s right to reimbursement for that claim for payment.” The requestor submitted documentation to support that the initial claim submission of the medical bill for services rendered from January 14, 2011 to February 28, 2011 was submitted to the insurance carrier on March 8, 2011. This submission was timely.
4. Documentation supports that the insurance carrier returned the bill as an incomplete bill, indicating that a revenue code lacked an accompanying HCPCS code required in box 44 of the submitted form UB-04 medical bill. 28 Texas Administrative Code §133.200(c) provides that “The proper return of an incomplete medical bill in accordance with this section fulfills the insurance carrier’s obligations with regard to the incomplete bill.” However, §133.200(a)(1) requires that “Insurance carriers shall not return medical bills that are complete, unless the bill is a duplicate bill.” 28 Texas Administrative Code §133.2 defines a complete medical bill as “A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms/Formats).” 28 Texas Administrative Code §133.10(d) specifies that “All information submitted on required billing forms must be legible and completed in accordance with Division instructions.” The applicable Division instructions are found in the *Texas Clean Claim and Electronic Medical Billing and Payment Companion Guides* (version 2.0), page 2.6, which indicates that box 44 of the UB-04 is situational, “Required if services meet the CMS UB-04 manual instructions (e.g., certain outpatient services require HCPCS codes).” Per *Medicare Claims Processing Manual*, CMS Publication 100-04, Chapter 25, § 75.5, Form Locator 44 is required “When coding HCPCS for outpatient services, the provider enters the HCPCS code describing the procedure here. On inpatient

hospital bills the accommodation rate is shown here." The services in dispute are not outpatient services, but rather inpatient services. Therefore, the Division finds that CMS UB-O4 manual instructions do not require form 44 to be populated with a HCPCS code for the inpatient services in dispute. No documentation was found to support that the returned bill was incomplete. The insurance carrier's rationale for returning the medical bill to the health care provider is not supported. The Division concludes that the return of the medical bill was not proper; the insurance carrier did not meet the requirements of §133.200(a)(1).

5. The Division finds that the health care provider timely submitted a complete medical bill within 95 days from the date(s) of service. Accordingly, the requestor has not forfeited the right to reimbursement. The insurance carrier's denial reason for timely filing is not supported. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.
6. Although the disputed services are inpatient hospital services, the services in dispute are not acute care, but rather long-term care services. Per Texas Administrative Code §134.404(f), "The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors as published annually in the Federal Register." Medicare does not assign a value to the long-term care services in dispute under the IPPS. Rather, Medicare has a separate payment system, the Long-Term Care Hospital Prospective Payment System, for determining reimbursement of the services in dispute; therefore, an amount cannot be determined by application of the formula to calculate the MAR as outlined in §134.404(f).
7. Per §134.404(e)(3), "If no contracted fee schedule exists that complies with Labor Code §413.011, and an amount cannot be determined by application of the formula to calculate the MAR as outlined in subsection (f) of this section, reimbursement shall be determined in accordance with §134.1 of this title (relating to Medical Reimbursement)." No contracted fee schedule exists and an amount cannot be determined by application of the formula to calculate the MAR as outlined in subsection (f); therefore, reimbursement shall be determined in accordance with 28 Texas Administrative Code §134.1.

28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626, requires that, in the absence of an applicable fee guideline or a negotiated contract, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection 134.1(f), which states that "Fair and reasonable reimbursement shall: (1) be consistent with the criteria of Labor Code §413.011; (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available."

Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

8. Former 28 Texas Administrative Code §133.307(c)(2)(E), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include "a copy of all applicable medical records specific to the dates of service in dispute." Review of the submitted documentation finds that the requestor has not provided copies of any medical records to support the services in dispute. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(E).
9. Former 28 Texas Administrative Code §133.307(c)(2)(F)(ii), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include a position statement including "the requestor's reasoning for why the disputed fees should be paid or refunded." Review of the submitted documentation finds that the requestor has not explained the reasons that the disputed fees should be paid. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(F)(ii).  
Former 28 Texas Administrative Code §133.307(c)(2)(F)(iii), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include a position statement of the disputed issues including "how the Labor Code, Division rules, and fee guidelines impact the disputed fee issues." Review of the submitted documentation finds that the requestor has not discussed how the Labor Code, Division rules and fee guidelines impact the disputed fee issues. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(F)(iii).  
Former 28 Texas Administrative Code §133.307(c)(2)(F)(iv), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include a position statement of the disputed issues including "how the submitted documentation supports the requestor position for each disputed fee issue." Review of the submitted documentation finds that the requestor has not discussed how the submitted documentation supports the requestor position for each disputed fee issue. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(F)(iv).

10. Former 28 Texas Administrative Code §133.307(c)(2)(G), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable.” Review of the submitted documentation finds that:

- The requestor has not articulated a methodology under which fair and reasonable reimbursement should be calculated.
- The Division has previously found, as stated in the adoption preamble to the former *Acute Care Inpatient Hospital Fee Guideline*, that “hospital charges are not a valid indicator of a hospital’s costs of providing services nor of what is being paid by other payors” (22 *Texas Register* 6271). The Division further considered alternative methods of reimbursement that use hospital charges as their basis; such methods were rejected because they “allow the hospitals to affect their reimbursement by inflating their charges” (22 *Texas Register* 6268-6269). Therefore, the use of a hospital’s “usual and customary” charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
- The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
- The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the submitted documentation finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services in dispute.

### **Authorized Signature**

	Grayson Richardson	December 6, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**